

**EXHIBIT H**

Nov 14 06 Franks Tr.txt

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6bftvilh

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

3

4 v. 05 CR 621 (KMK)

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5 ALBERTO VILAR and GARY TANAKA,

5

6 Defendants.

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7 -----x

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8 New York, N.Y.

8

9 November 15, 2006

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10 Before:

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11 HON. KENNETH M. KARAS,

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- 5 supposed to come from?  
6 A. From her other investments at Amerindo.  
7 Q. Not the SBIC?  
8 A. Correct.  
9 Q. What happened -- what, if anything, happened after Lilly  
10 Cates invested in the SBIC?  
11 A. After she invested she was supposed to expect her first  
12 payment in September of 2002. September 2002 came and she did  
13 not receive her first quarter payment, which was \$250,000. In  
14 October of 2002 she met with Gary Tanaka and Alberto Vilar in  
15 the Amerindo U.S. office and told Gary Tanaka and Alberto Vilar  
16 she did not receive her September payment. Gary Tanaka told  
17 her when he returns to London, he would take care of it.  
18 Q. Did Lilly Cates succeed in getting her quarterly funds from  
19 Amerindo?  
20 A. No, she did not.  
21 Q. Did there come a time when Lilly Cates requested the  
22 redemption or transfer of all her investments managed by  
23 Amerindo?  
24 A. Yes.  
25 Q. Approximately when was that?

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6bftvilh Fraterrigo - direct

- 1 A. February of 2005.  
2 Q. Was that request honored?  
3 A. No, it was not.  
4 Q. As of May 25th, 2005, at the point in which you got the  
5 Amerindo U.S. search warrant, what was the status of Lilly  
6 Cates' request to redeem or transfer her Amerindo investments?  
7 A. Lilly Cates wasn't able to redeem her investments.  
8 Amerindo did not return her money from her investments.  
9 Q. What was the approximate value of Lilly Cates' investments  
10 managed by Amerindo as of the last account statement she  
11 received?  
12 A. Approximately \$12 dollars.  
13 Q. Turning to the Mayer family, based on your investigation  
14 leading up to your obtaining the search warrant for Amerindo  
15 U.S., did there come a time that the Mayer family invested  
16 money through Amerindo?  
17 A. Yes.  
18 Q. Approximately starting when?  
19 A. April of 1988.  
20 Q. Prior to May 25th, 2005, did you discuss with the Mayers  
21 their ability to obtain money out of their Amerindo  
22 investments?  
23 A. Yes.  
24 Q. Was their experience uniform throughout their investment  
25 history with Amerindo or did it vary over time?

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1 A. It varied over time.

2 Q. Generally what was the Mayers' experience?

3 A. Lisa Mayer explained to me that she -- up until 1997 they  
4 were having trouble redeeming their investments from Amerindo.

5 Q. So Lisa Mayer explained to you up until '97 --

6 A. Sorry, from 1997 on it was when they were having trouble  
7 redeeming their investments.

8 MR. COLTON: I object to the methodology of the  
9 questions. The government asks a leading question to correct  
10 the answer, and it's inappropriate.

11 THE COURT: But sometimes people are confused and  
12 lawyers are allowed to try to clear it up.

13 MR. COLTON: I have no problem with the clarifying,  
14 but I don't want the clarifying to be by leading.

15 THE COURT: The warning is noted but otherwise  
16 overruled.

17 Q. And prior to 1997, what did Lisa Mayer describe to you as  
18 the Mayers' experience with Amerindo?

19 A. She explained to me they were receiving her interest  
20 payments. They didn't indicate they had had any problems with  
21 their investments.

22 Q. You mentioned that starting 1997 was the first point that  
23 Lisa Mayer described to you having trouble with her  
24 investments. What happened in 1997 as Lisa Mayer described it  
25 to you?

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1 A. In 1997 was the first time they requested to redeem their  
2 GFRDA investment. They were discouraged by Alberto Vilar to  
3 redeem that investment. However, they were able to redeem  
4 their ATGF investment.

5 Q. After 1997 did there come a time when the Mayers again  
6 attempted to redeem their GFRDA investment?

7 A. Yes.

8 Q. When was that?

9 A. That was in December of 2000.

10 Q. What happened in 2000, December 2000?

11 A. In December 2000 they requested to redeem their GFRDA  
12 investment and they were told that they didn't give the proper  
13 30-day notice to redeem their investment.

14 Q. Based on your interview with Lisa Mayer, was she aware of  
15 the notice requirement?

16 A. No, she was not.

17 Q. What happened next after Amerindo said they could not  
18 redeem their GFRDA investment because they had not complied  
19 with the 30-day notice requirement?

20 A. The Mayer family renewed their investment for three years  
21 at 11 percent per annum.

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- 22 Q. Did have you an impression from Ms. Mayer about whether the  
23 Mayers believed they had a choice to renew their GFRDA  
24 investment?  
25 A. Yes.

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- 1 Q. What was that impression?  
2 A. From what the Mayers described to me, Lisa Mayer described  
3 to me, the family did not have a choice.  
4 Q. After 2000, did there come a time when the Mayers again  
5 requested money from Amerindo?  
6 A. Yes.  
7 Q. When was that?  
8 A. In the spring of 2002.  
9 Q. And what were the circumstances in the spring of 2002 under  
10 which they requested money from Amerindo?  
11 A. They were looking to purchase a house. They found a house  
12 in Scarsdale that they were looking to put money down to  
13 purchase the house.  
14 Q. And what was Amerindo's response to the requests by the  
15 Mayers in the spring of 2002 for the money for a down payment  
16 of a house?  
17 A. Lisa Mayer told me she spoke to Alberto Vilar and he  
18 relayed that Gary and I are not a bank. He also told Lisa  
19 Mayer that if they redeemed their investment they would incur a  
20 45 percent penalty if they redeemed their investment.  
21 Q. And what investment are you referring to?  
22 A. The GFRDA.  
23 Q. How, if at all, did that differ from previous  
24 correspondence from Alberto Vilar?  
25 A. In a previous letter from Alberto Vilar he stated that it

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- 1 would be a 20 percent penalty if they redeemed.  
2 Q. After Amerindo denied the Mayers' request for money in the  
3 spring of 2002, did the Mayers make attempts to obtain money  
4 from other sources?  
5 A. Yes.  
6 Q. What did the Mayers do?  
7 A. They attempted to get a loan from a bank.  
8 Q. What, if anything, did the Mayers need from Amerindo in  
9 order to obtain a loan?  
10 A. They needed a financial certification from Amerindo in  
11 order for them to get the loan.  
12 Q. What, if any, efforts did the Mayers make to get a  
13 financial certification from Amerindo?  
14 A. Lisa Mayer told me that she --

- 15 MR. COLTON: I object to the line, your Honor. I

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16 don't believe this has anything to do with redemption, although  
17 I may be wrong if there's an offer.

18 THE COURT: Ms. McEvoy?

19 MS. McEVOY: Your Honor, I think it directly relates  
20 to the events in the spring of 2002 of the Mayers' attempts to  
21 get money, and when they couldn't get money from Amerindo, they  
22 asked Amerindo for another -- for financial certification in  
23 order for them to get money from a third party. And that also  
24 failed. So I think it goes directly to that information.

25 THE COURT: But I thought that the issue was  
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1 redemptions before 2003, 2005, depending on which inventory  
2 we're talking about here, not whether or not they were unable  
3 to get other documents. Because the idea here is to look at  
4 what was in the four corners of the affidavit and what it was  
5 that Inspector Fraterrigo knew that wasn't in the four corners  
6 of the affidavit as it related to the specific allegations. I  
7 don't recall any allegations about willingness to provide  
8 initial certifications or not in the affidavit.

9 MS. McEVOY: I think, your Honor, in paragraph 6A  
10 specifically the lines that your Honor pointed out in your  
11 opinion there is general language about Lisa Mayer feeling that  
12 her -- the Mayers feeling that their money was held hostage. I  
13 think this goes to those provisions and whether or not those  
14 provisions in paragraph 6A are accurate based on these facts.

15 THE COURT: I mean the analysis of the affidavit  
16 relating to the question of redemptions -- and there was the  
17 specific paragraph about how for years because of her father  
18 being ill Lisa Mayer tried to get money and then the generic  
19 catch-all paragraph. But that all had to do with the question  
20 of redemptions and not about whether or not Amerindo was  
21 otherwise cooperating in the effort of the Mayers to get money  
22 from other sources.

23 MS. McEVOY: I think it's part and parcel of the same  
24 story, your Honor.

25 THE COURT: I don't agree. I don't agree at this  
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1 point. I don't agree. Sustain the objection.

2 BY MS. McEVOY:

3 Q. What happened next in connection with the Mayers' attempts  
4 to get money from Amerindo?

5 A. In September of 2002 the Mayer family had dinner with  
6 Alberto Vilar in Westchester. They had a conversation with  
7 Alberto Vilar regarding their investment, and if they could  
8 rely on the 11 percent interest on their investment. Alberto  
9 Vilar replied that they could count on their interest for six

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- 10 to eight months.  
11 Q. I'm sorry, when was this?  
12 A. September of 2002.  
13 Q. Did there come a time when the Mayers stopped receiving  
14 interest payments?  
15 A. Yes.  
16 Q. When was that?  
17 A. In October of 2002.  
18 Q. What, if anything, did the Mayers do in response to that?  
19 A. The Mayer family -- as Lisa described it, they tried to  
20 call Alberto Vilar and they received no response. They had a  
21 conversation with Gary Tanaka in December of 2002 where he  
22 provided comments that they were restructuring and they were  
23 evasive in their response about their money. And in December  
24 of 2002 they went to the residence of Alberto Vilar in New York  
25 City -- Lisa Mayer, Deborah Mayer and Herbert, Dr. Herbert

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- 1 Mayer in a wheelchair went to New York City to speak to Alberto  
2 Vilar in person.  
3 Q. What happened when they went to Alberto Vilar's?  
4 A. When they went to the residence they spoke to the doorman.  
5 The doorman said Alberto Vilar was upstairs. When they went  
6 upstairs they believed Alberto Vilar was in the apartment and  
7 they were ringing the doorbell for an hour pleading with them  
8 to talk to him to get their money.  
9 Q. Did they speak with Alberto Vilar on that occasion?  
10 A. No, they did not.  
11 Q. Directing your attention to January 2003, what, if  
12 anything, happened with respect to the Mayers' attempts to  
13 obtain from the Amerindo investments?  
14 A. Lisa Mayer told me she made several phone calls to Amerindo  
15 to Alberto Vilar. She received no response. She wrote a  
16 letter to Alberto Vilar and Gary Tanaka and she received a  
17 letter in January 2003 from Renato Tanaka.  
18 Q. What, if anything, did the letter say?  
19 A. The letter explained to the Mayer family that their  
20 interest payments were going to be reduced from \$96,000 to  
21 \$50,000 and payments would be made to them ad hoc.  
22 Q. Is that something that the Mayers requested?  
23 A. No.  
24 Q. Between January 2003 and November 2003, what, if any,  
25 efforts did the Mayers make to get additional money from

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- 1 Amerindo investments?  
2 A. The Mayer family made several phone calls, sent letters in  
3 requesting to get their interest payment or any redemption on

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- 4 their investments.  
5 Q. Were the Mayers successful?  
6 A. No, they were not.  
7 Q. Did there come a time when the Mayers requested the  
8 redemption or transfer of all their investments managed by  
9 Amerindo?  
10 A. Yes.  
11 Q. Approximately when was that?  
12 A. That was in November of 2003.  
13 Q. Who made the redemption request?  
14 A. The Mayer family, the attorney on behalf of the Mayer  
15 family, as well as the director of the trust account.  
16 Q. Did the redemption request comply with the 30-day notice  
17 requirement mentioned by Renata Tanaka in the year 2000?  
18 A. Yes.  
19 Q. After the redemption request, did the Mayers get their  
20 entire investment back as they requested?  
21 A. No, they did not.  
22 Q. Did they get any money from Amerindo after they submitted  
23 the redemption request?  
24 A. Yes.  
25 Q. And what were the circumstances of that?

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- 1 A. There were several payments here and there which Lisa Mayer  
2 described totaled approximately \$600,000.  
3 Q. And what were the circumstances leading up to those  
4 payments as Lisa Mayer described them to you?  
5 A. Renata Tanaka and Gary Tanaka tried to make arrangements  
6 with the Mayer attorney to make payments over time, and Mayer  
7 family didn't agree with it, they wanted their full redemption  
8 of their investment. And payments were made here and there and  
9 it totaled \$600,000.  
10 Q. Is that an approximate amount?  
11 A. Yes, it is.  
12 Q. As of May 25th, 2005 what was the status of the Mayers'  
13 request to redeem their entire Amerindo investments?  
14 A. They were not able to redeem their entire investment.  
15 Q. What was the approximate value of the Mayers' Amerindo  
16 investments at that time?  
17 A. Approximately \$11 million.  
18 Q. Now I'm going to direct your attention to the search  
19 warrant affidavit --  
20 A. Yes.  
21 Q. -- that you swore to. What was the process by which the  
22 search warrant affidavit for Amerindo U.S. was drafted?  
23 A. The affidavit was drafted by AUSA Mark Litt. I reviewed  
24 it, I read it, I verified it for accuracy, and it was presented  
25 to his supervisor for approval and then we presented it to the

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8 (Defendant's Exhibit J received in evidence)  
9 Q. Inspector Fraterrigo or Agent Fraterrigo, your testimony is  
10 that you reviewed documents to confirm statements made. Did  
11 you review any documents with respect to Rhodes Capital before  
12 signing the search warrant affidavit?  
13 A. I recall seeing a certificate from Lilly Cates, I didn't  
14 see this document.  
15 Q. When you say a certificate, what are you referring to?  
16 A. I believe it was a copy of her purchase of the two units.  
17 I can't recall if I received that. I believe I received that  
18 before without looking at my file.  
19 Q. When you say that, you're referring to the certificate?  
20 A. The certificate, yeah.  
21 Q. You would agree with me, wouldn't you, Inspector  
22 Fraterrigo, that Defendant's J, which is now admitted, does  
23 indeed describe the Rhodes Capital investment?  
24 MS. McEVOY: Objection.  
25 THE COURT: It's in. You can make the argument. She  
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1 said she didn't see it beforehand.  
2 Q. What steps did you take to look through the documents  
3 provided by Lilly Cates to look for Rhodes Capital investments  
4 before swearing to a magistrate judge that she never received  
5 information describing her investment?  
6 MS. McEVOY: Objection.  
7 THE COURT: Yes, sustained.  
8 Q. Inspector Fraterrigo, when you swore out the affidavit  
9 before Judge Maas, you didn't tell Judge Maas that the one  
10 million dollars Lilly Cates invested in Rhodes Capital came  
11 from a redemption of profit from her investments with Amerindo?  
12 THE COURT: You have to establish whether or not she  
13 knew that.  
14 MR. COLTON: First establish they didn't tell him.  
15 THE COURT: No, no.  
16 MR. COLTON: Fine.  
17 Q. Inspector Fraterrigo, you knew when you swore out the  
18 affidavit before Judge Maas that the Rhodes Capital purchase by  
19 Lilly Cates was done with a million dollars of redeemed profit  
20 from her previous Amerindo investment; correct?  
21 A. Yes, that's correct.  
22 Q. And you did not tell Judge Maas that; correct?  
23 A. That's correct.  
24 Q. Given that you you're making allegations of impropriety  
25 with respect to the Rhodes Capital investment, didn't you think  
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6bftvllh Fraterrigo - cross  
1 that a million dollars of profit by Lilly Cates as of the time  
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2 of investing in Rhodes Capital would be something that the  
3 magistrate would want to know in making his decision?

4 MS. McEVOY: Objection, argumentative.

5 THE COURT: Well, don't be so argumentative, otherwise  
6 it's fine. It's argumentative because of tone more than  
7 someone reading it, but it's too early in the day to be heated  
8 up.

9 MR. COLTON: I apologize for the tone.

10 A. Can you repeat the question?

11 Q. Sure. Didn't you think the fact that Lilly Cates purchased  
12 her Rhodes Capital investment with a million dollars of profit  
13 from a previous Amerindo investment was a fact that the  
14 magistrate would want to know in assessing the search warrant  
15 application?

16 A. I didn't think of it at the time. I didn't put it in. I  
17 didn't think of it at the time.

18 Q. Would your answer as to all of the redemptions and all of  
19 the profits and all of the interest of Lilly Cates that she  
20 received over her 18-year history with Amerindo be the same,  
21 i.e., you never thought about it?

22 A. That's correct.

23 Q. And all of the money received from the Mayers -- by the  
24 Mayers from Amerindo, all of the redemptions, all of the  
25 profits, you never thought about it?

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6bftvilh Fraterrigo - cross

1 A. No, I didn't put it in. I put in what was facts that they  
2 did not receive their money.

3 Q. And you knew when you swore out the search warrant  
4 affidavit you were requesting permission to search for  
5 documents, not just 2002 or 2003, but all the way back to 1987?

6 A. That's correct.

7 Q. And still your testimony is you didn't think that any  
8 evidence from 1987 to 2002 would be relevant to Judge Maas?

9 MS. McEVOY: Objection. Mischaracterizes her  
10 testimony.

11 THE COURT: Rephrase it.

12 Q. You didn't think about whether it would be relevant to  
13 Judge Maas?

14 A. No, I just didn't think of it. I didn't think whether it  
15 was relevant or it was not relevant, I just didn't think of it.

16 Q. Did it occur to you when you swore out the search warrant  
17 affidavit that you were presenting no evidence at all with  
18 respect to the pre-2002 period?

19 A. No, it didn't occur to me.

20 Q. Did you ever think or have any conversation with the U.S.  
21 Attorney's Office about what the probable cause was for  
22 pre-2002 documents and events?

23 MS. McEVOY: Objection.

24 THE COURT: Rephrase it, Mr. Colton.

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25 Q. Did you ever think about what the probable cause was for a  
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1 search warrant for pre-2002 documents?

2 MS. McEVOY: Objection, that's not the subject of the  
3 Franks hearing.

4 THE COURT: Why don't you be more specific.

5 Q. Did you ever think about whether redemptions, interest or  
6 profit from investments would be relevant in 2002, all the way  
7 back to 1987, for a search warrant seeking documents from that  
8 period?

9 A. Can you repeat that?

10 Q. Sure. Would you agree with me that redemptions, profit and  
11 interest earned by investors between 1987 and 2002 is relevant  
12 to the question of probable cause for that time period?

13 MS. McEVOY: Objection as to whether the question is  
14 pertaining to her mindset now as opposed to whether she  
15 considered that then.

16 THE COURT: Fair point.

17 Q. As adopted at that time.

18 A. It didn't seem like the same question that you asked  
19 before. Could you repeat the question that I asked before?

20 Q. I'll stick with the one that I want you to answer.

21 A. Okay.

22 Q. I hear you, and I'm trying to adopt to both your counsel's  
23 objections to make it --

24 THE COURT: At the time you swore out the affidavit,  
25 Agent, did you contemplate whether or not it was important to  
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1 Magistrate Judge Maas or any magistrate about whether or not  
2 Ms. Cates and the Mayer family redeemed their investments  
3 before 2002 going back to '87.

4 THE WITNESS: No, I did not.

5 THE COURT: Did you contemplate it, even though --  
6 well, you knew that the request for the warrant was going to  
7 seek permission to get documents at Amerindo going back to  
8 1987; correct?

9 THE WITNESS: That's correct.

10 THE COURT: Did you think, given that request, that it  
11 was -- it might be important to the Magistrate Judge to know  
12 whether or not the victims you identified were in fact able to  
13 redeem their investments from the period of '87 to 2002?

14 THE WITNESS: No, I didn't.

15 THE COURT: Okay. Go ahead, Mr. Colton.

16 MR. COLTON: Thank you, your Honor.

17 BY MR. COLTON:

18 Q. I show you what's been marked as Defendant's B for the  
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19 hearing of November 15th.

20 What you're looking at and correct me in I'm wrong,

21 Agent Fraterrigo, in Defendant's B is Inspector Golden's

22 memorandum of interview of the Lilly Cates interview of

23 April 20, 2005; correct?

24 A. That's correct.

25 Q. And that's the document that you testified earlier that you

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1 reviewed prior to swearing out the search warrant at issue?

2 A. That's correct.

3 Q. And in that document it contains the information that Lilly

4 Cates --

5 MS. McEVOY: Objection from reading from the document.

6 The government doesn't understand the basis.

7 MR. COLTON: The government moves B for the purpose of

8 this hearing.

9 THE COURT: She doesn't move it, you move it, the

10 defense moves B.

11 MR. COLTON: Sorry. Does the government object to the

12 defense moving it?

13 MS. McEVOY: Yes, because the government doesn't

14 understand the basis.

15 MR. COLTON: These are the notes that she testified

16 she reviewed, therefore it contains information that are the

17 basis of her swearing out the search warrant. She already

18 testified to that.

19 MS. McEVOY: First of all, she didn't say she reviewed

20 notes, she said she reviewed the draft MOI, for clarity of the

21 record. And second, it hasn't been established that she has a

22 lack of recollection about these notes. If you have a question

23 for the agent about something in this MOI and she doesn't

24 recall it, the government doesn't have an objection.

25 THE COURT: What's the point? I mean if she said she

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6bftvilh Fraterrigo - cross

1 reviewed the MOI, and the issue is what she had in her head

2 when she swore out the affidavit, what doesn't it come in just

3 for that purpose?

4 MS. McEVOY: That's fine, your Honor, I just don't

5 see -- I mean a proper basis for its introduction has not been

6 established.

7 THE COURT: I would think that you can go ahead and

8 ask the agent, but I think she could authenticate it for

9 purposes it's going to come in for at this hearing.

10 MR. COLTON: I thought I did, but --

11 THE COURT: Normally, Ms. McEvoy, I understand this

12 would be hearsay, but the whole issue here is what Agent

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24 you litigated. And I let you have some leeway because of the  
25 use of redemption, but --

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6bftvilh Fraterrigo - cross

1 MR. COLTON: It goes hand in hand, your Honor.

2 THE COURT: No, it doesn't, it really doesn't. And I  
3 actually am very disappointed this is how this is starting off.  
4 Because there are some specific statements that I agreed with  
5 you were the basis to have a Franks hearing, and we are not  
6 even dealing with those statements, we're dealing with other  
7 statements.

8 MR. COLTON: I'll move on, your Honor, but I would  
9 note for the record that if there is an affirmative  
10 misstatement -- the government led the agent through all this  
11 testimony how she verified every fact, now I have something  
12 that shows clearly she didn't.

13 THE COURT: The government did not ask her about  
14 Rhodes.

15 MR. COLTON: They asked her if she verified every  
16 fact, and she didn't.

17 THE COURT: They were actually -- if you'll recall, I  
18 would not let Ms. McEvoy go beyond the four corners of the  
19 affidavit, and there's a very discrete reason we're having this  
20 hearing. If you thought in the course of the discovery that  
21 you received in preparation for this hearing that there were  
22 other misrepresentations that justified a broader Franks  
23 hearing, you could have written me a letter. Instead what you  
24 have done is waited until we started the hearing and then  
25 launched with Rhodes investment statements. I let you talk

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6bftvilh Fraterrigo - cross

1 about the redemptions because that is relevant, but whether or  
2 not there were misrepresentations about her getting information  
3 and what information she got and whether or not Agent  
4 Fraterrigo knew about that is a different topic.

5 MR. COLTON: I'll move on.

6 THE COURT: Okay.

7 BY MR. COLTON:

8 Q. Inspector Fraterrigo, when you swore out the search warrant  
9 affidavit on May 25th, 2005, you knew that, according to Lilly  
10 Cates, she had no difficulty redeeming investments prior to  
11 2002; correct?

12 A. That is correct.

13 Q. And you did not inform the magistrate of that; correct?

14 A. That is correct.

15 Q. In fact, Lilly Cates told you that she, quote, received a  
16 lot of money from Amerindo in 1995; correct?

17 A. That's correct.

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- 18 Q. And you failed to tell the magistrate judge that as well;  
19 correct?  
20 A. That is correct.  
21 Q. In fact, you knew from the documents that you had reviewed  
22 prior to swearing out the search warrant affidavit that there  
23 were many, many redemptions prior to 2002; correct?  
24 A. That is correct.  
25 Q. In your search warrant affidavit, Government Exhibit 33 for  
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- 6bftvilh Fraterrigo - cross  
1 the hearing, the last full sentence on page four you swear  
2 under oath: In approximately February 2005, Cates attempted to  
3 redeem her entire investment portfolio at Amerindo, including  
4 her SBIC investment described in the Vilar criminal complaint,  
5 Rhodes, and any other investment with Amerindo, but Amerindo  
6 and Vilar have refused to move her investment portfolio to bear  
7 Stearns.  
8 A. That's correct.  
9 Q. But you neglected to tell the magistrate that Lilly Cates  
10 told you that on February 28th, 2005 she effectively redeemed  
11 \$3 million of her Amerindo investment; correct?  
12 A. I did not have that information.  
13 Q. I show you what what's marked as Defendant's H for this  
14 hearing for identification. Sorry, I handed you the wrong  
15 document. I'm also showing you Defendant's C for  
16 identification for this hearing.  
17 Now looking at Defendant's Exhibit C, do you recognize  
18 that?  
19 A. Yes.  
20 Q. These are notes of an interview with Lilly Cates; correct?  
21 MS. McEVOY: Objection, your Honor. I believe Agent  
22 Fraterrigo said she did not see these notes prior to obtaining  
23 the search warrant.  
24 MR. COLTON: I object to the government testifying for  
25 her. She can answer that question.  
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- 6bftvilh Fraterrigo - cross  
1 THE COURT: I object to the whole tone of this, and  
2 we're going to use this hearing as a laboratory experiment of  
3 whether or not this trial can be done efficiently.  
4 Ms. McEvoy, please don't testify. Mr. Colton can ask  
5 the question. If you think it's an improper question, you can  
6 object. If Agent Fraterrigo says she didn't review this  
7 beforehand, then I presume Mr. Colton will move on. If she  
8 says she did, then he will ask questions that are appropriate  
9 Mr. Colton, ask questions about Defendant's C starting  
10 with whether or not she saw this or reviewed these notes before  
11 she swore out the affidavit.

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11 night in the garage and took the lawn mower. That doesn't  
12 change the fact when I asked my neighbor for the lawn mower, he  
13 said no.

14 And the allegation in the affidavit is that the  
15 defendants said no, so she went through some self-help to  
16 recuperate some of her investment. It's never been argued to  
17 me that there should be a Franks hearing because the government  
18 misrepresented to Judge Maas or gave him the impression that  
19 all of the money, all of the SBIC money that she invested, let  
20 alone all the money she invested, was gone. And it's unclear  
21 to me, even if that is true, that the \$3 million that she was  
22 able on her own -- after being, according to the affidavit,  
23 rebuffed by the defendants -- to redeem is SBIC investment  
24 money. So even if the government does allege SBIC is gone, it  
25 doesn't mean there aren't other investments that she could on

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6bftvilh Fraterrigo - cross

1 her own get from Bear Stearns.

2 I understand there may be new things you're learning.  
3 I'm not saying we can't have a discussion about what more there  
4 needs to be a hearing about, but I don't want to do it this  
5 way.

6 MR. COLTON: That's fine, your Honor.

7 BY MR. COLTON:

8 Q. Agent Fraterrigo, Lilly Cates told you in no uncertain  
9 terms that in May 2002 she was able to redeem both \$166,000  
10 from Amerindo and \$150,000 from Amerindo; correct?

11 A. She did not tell me? Is that the question?

12 Q. She told you she was in fact able, adding those numbers up,  
13 to redeem \$316,000 in May of 2002 from Amerindo?

14 A. Without looking at my notes on it I can't recall exactly  
15 that.

16 Q. Do you have Defendant's H for identification in front of  
17 you?

18 A. Yes.

19 Q. And Defendant's H for this hearing, November 15th, are  
20 notes that you took; correct?

21 A. That's correct.

22 Q. And these are notes that you had access to prior to  
23 swearing out the search warrant affidavit on May 25, 2005?

24 A. That is correct.

25 Q. And your notes at page --

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6bftvilh Fraterrigo - cross

1 MR. COLTON: The defense moves the admission of  
2 Defendant's H.

3 MS. McEVOY: No objection.

4 MR. HOFFMAN: No objection.

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5 THE COURT: Defendant's H is received.  
6 (Defendant's Exhibit H received in evidence)  
7 Q. In fact, Agent Fraterrigo, your Honor notes on the bottom  
8 of what is the third page, Bates stamped FR67, says: Transfer  
9 of Amerindo 150,000, May 2002; correct?  
10 A. That's correct.  
11 Q. And Lilly Cates told you she was able to redeem \$150,000 in  
12 May 2002?  
13 A. That's correct.  
14 Q. And you did not tell Magistrate Maas about that redemption;  
15 correct?  
16 A. No, I did not.  
17 Q. On the next page of H --  
18 THE COURT: Which page?  
19 MR. COLTON: I was on 67 at the bottom right corner.  
20 THE COURT: Got it.  
21 Q. On page -- sorry, also page 67, if you move up to the page  
22 it says either 5/21 or 5/24, I can't read your writing, 166,000  
23 on Lilly's behalf to Lisa Jewelry. Do you see that?  
24 A. Yes.  
25 Q. So Lilly Cates told that you Amerindo made a transfer on  
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6bftvilh Fraterrigo - cross  
1 her behalf or redemption of \$166,000; correct?  
2 A. That's correct.  
3 Q. And you did not tell Magistrate Judge Maas about that  
4 \$166,000 transfer or redemption either; did you?  
5 A. No, I did not put that in the affidavit.  
6 Q. And your testimony earlier in this hearing was that  
7 starting in 2002 Lilly Cates had difficulty redeeming; correct?  
8 MS. McEVOY: Objection.  
9 THE COURT: Basis for the objection?  
10 MS. McEVOY: Without testifying, mischaracterizes her  
11 earlier testimony.  
12 MR. COLTON: I'll change it to an open-ended question.  
13 Q. Did you testify that starting in 2002 Lilly Cates had  
14 difficulty redeeming her investment?  
15 A. I testified after June 2002, after she made her SBIC  
16 investment, she wasn't able to redeem her investment.  
17 Q. But you did not tell the magistrate judge either the first  
18 statement you just made that after June 2002 she had difficulty  
19 nor did you tell him about the May 2002 redemptions. All left  
20 out; correct?  
21 MS. McEVOY: Objection as to form.  
22 THE COURT: Technically you're right, but it's  
23 answerable.  
24 Did you tell the magistrate judge about either of  
25 those facts?  
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6bftvilh

Fraterrigo - cross

1 THE WITNESS: I did not tell him about the May 2002  
2 redemption.

3 THE COURT: It's time for our lunch break. If you are  
4 about to move to another topic --

5 MR. COLTON: It's a good time. I have more of this  
6 topic, but it's a break in between.

7 THE COURT: So let's break for lunch. We'll come back  
8 at 2:00. You may want to, Mr. Colton, think about what you can  
9 do for say about an hour and change worth of time, because we  
10 wasted a lot of time on peripheral stuff. So we are finishing  
11 today.

12 MR. COLTON: By way of guidance, the government has  
13 produced at least 40 or 50 documents all reflecting redemptions  
14 by the Mayers or Cates.

15 THE COURT: I know because I looked at them before it  
16 got produced, it's not too voluminous, and we spent a lot of  
17 time on stuff that wasn't directly related to what this hearing  
18 was about. So I'm letting you know that in about an hour's  
19 time after we resume, it's going to be time for Mr. Vilar's  
20 counsel to have their chance to cross-examine.

21 MS. McEVROY: And also the government has no problem  
22 stipulating to the introduction of those documents provided.  
23 We see what they are.

24 THE COURT: That's a fair suggestion. If you all want  
25 to try to work that out, that would be most helpful. See you

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6bftvilh

Fraterrigo - cross

1 all at 2:00.

2 MR. COLTON: One more thing. I think the same rules  
3 about the witness being on cross --

4 THE COURT: Agent, you know the drill.

5 THE WITNESS: Yes.

6 THE COURT: Thank you.

7 (Luncheon recess taken)

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10 Amerinda; correct?  
11 A. That is correct.  
12 THE COURT: Defense offers D, your Honor.  
13 MS. McEVOY: No objection.  
14 MR. HOFFMAN: No objection.  
15 THE COURT: Defendant's D is received.  
16 (Defendant's Exhibit D received in evidence)  
17 Q. Agent Fraterrigo, leaving aside the \$5 million, 2002  
18 investment, outside of that, this memorandum describes a one  
19 million dollar investment in Rhodes, and then 300,000 in  
20 Amerindo Tech D. Anything else?  
21 A. I believe that's it.  
22 Q. So now that we have reviewed your memorandum of interview  
23 of May 10th, 2005, is it fair to say this after questioning of  
24 Lilly Cates she told that you she invested approximately 1.3  
25 million in Amerindo other than the SBIC?

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6bftvilh Fraterrigo - cross  
1 A. Initially she invested 1.2 million with Amerindo and then  
2 the proceeds that she made from the 1.2 million she invested  
3 one million in Rhodes, then 300,000 in the Amerindo Tech D.  
4 Q. Let me rephrase. From your interview with Lilly Cates you  
5 learned that out of pocket transferring assets to Amerindo she  
6 transferred 1.2 million?  
7 A. That's correct.  
8 Q. And then transferred 300,000?  
9 A. That's correct.  
10 Q. So out of pocket she entrusted out of her own pocket to  
11 Amerindo a million and a half?  
12 A. And the 5 million.  
13 Q. Yes, outside of 5 million, which came later.  
14 A. That's correct.  
15 Q. During the time period from when she started with Amerindo  
16 until 1990, you knew that she didn't put in a million and a  
17 half and had gotten out 3 million plus another million to put  
18 into Rhodes; correct?  
19 MS. McEVOY: Objection.  
20 THE COURT: I'm not sure what the basis of the  
21 objection is.  
22 MS. McEVOY: It's a mischaracterization of testimony.  
23 THE COURT: Why don't you ask her if she knew that.  
24 Q. Based on your interviews with Lilly Cates in which you  
25 asked about her investment history, did you know that she

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6bftvilh Fraterrigo - cross  
1 invested 1.2 million, then 300,000, but ended up redeeming 3  
2 million as reflected in the confirmations and another one  
3 million as we discussed in the Rhodes investment?

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4 A. I know that she invested the 1.2 million, the 300,000 in  
5 the Amerindo Tech D and the one million in the Rhodes. I knew  
6 that she had expenses that she had paid by Amerindo that she  
7 was able to redeem some of her money from the interest in all  
8 of her Amerindo investments. I didn't add it up.

9 Q. So it's fair to say that you never mentioned to -- made the  
10 decision not to tell Judge Maas that in the early period from  
11 1987 or '88 through 1999 she actually took out of Amerindo over  
12 two times as much as she put into Amerindo?

13 MS. McEVOY: Objection as to form.

14 THE COURT: You may want to rephrase it, instead of  
15 making the decision.

16 Q. You did not tell Judge Maas that during the late '80s and  
17 the '90s Lilly Cates took out of Amerindo more than twice what  
18 she put in?

19 A. No, I did not.

20 Q. At the time you filled out the affidavit did you believe  
21 that that would be a fact that Judge Maas would want to know in  
22 determining whether there was probable cause to allow you to  
23 search for documents related to that '90s and late 80s time  
24 period?

25 A. I don't understand your question, I don't -- can you repeat  
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6bftvilh Fraterrigo - cross

1 that?

2 Q. You asked for a search warrant that allowed you to search  
3 for documents related to the late '80s and to the '90s;  
4 correct?

5 A. That's correct.

6 Q. Didn't you think when you filled out the search warrant  
7 that Judge Maas, in deciding whether to grant a search warrant  
8 for documents from the '80s and the '90s, would want to know  
9 that during that time period one of the two victims collected  
10 twice as much as she actually put into the company?

11 A. No, I didn't think of that at the time.

12 THE COURT: Just so I'm clear, Agent, you were aware  
13 as of May 25th, that in fact she had redeemed twice what she  
14 put in from the time period Mr. Colton just mentioned, roughly.

15 THE WITNESS: I know that he she was able to redeem  
16 her expenses, I don't know the exact amount of how much she was  
17 able to redeem.

18 THE COURT: Do you know that she redeemed more than  
19 she put in?

20 THE WITNESS: No, I don't know for sure if I did. I  
21 don't think I did.

22 BY MR. COLTON:

23 Q. But you don't dispute that you had a available to you to  
24 verify facts in your affidavit client confirmations that  
25 reflect redemptions and cash payments to Lilly Cates or to

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6bftvilh Fraterrigo - cross

- 1 vendors designated by Lilly Cates?
- 2 A. Yes, I had that information.
- 3 Q. And you don't have any reason to believe, do you, that
- 4 Lilly Cates kept every single client confirmation and
- 5 redemption notice that she got from Amerindo over a 17-year
- 6 period; do you?
- 7 MS. McEVOY: Objection.
- 8 THE COURT: Agent, is it possible that you weren't
- 9 given every confirmation that Ms. Cates might have received
- 10 from Amerindo, or do you know?
- 11 THE WITNESS: It's possible, I don't know for sure.
- 12 Q. Did you ask her for every confirmation or every piece of
- 13 evidence of redemption that she had?
- 14 A. No, I believe we did ask her for all of the documents that
- 15 she had relating to her investments in Amerindo.
- 16 Q. Did you do anything to correlate between the amount she
- 17 told you she received when she verbally spoke to you and the
- 18 documents she provided to you?
- 19 A. Correlate what specific fact?
- 20 Q. To see whether she was telling you about even more
- 21 redemptions than appeared in the client confirmation she gave
- 22 you.
- 23 A. I don't recall. I don't know if I did.
- 24 Q. Is the reason that you didn't try to calculate this was
- 25 because you didn't think it was relevant whether she was making

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6bftvilh Fraterrigo - cross

- 1 200, 300 percent returns, that wasn't relevant to the question
- 2 of whether some type of crime might have been committed in the
- 3 '80s or '90s?
- 4 MS. McEVOY: Objection.
- 5 THE COURT: Overruled.
- 6 A. I didn't think if it was relevant, I didn't think of that.
- 7 That thought didn't come to my mind at the time.
- 8 Q. When you signed the search warrant affidavit, were you
- 9 aware that you were seeking to search documents from the '80s
- 10 and the '90s as well as the post-2002 period?
- 11 MS. McEVOY: Objection, asked and answered.
- 12 THE COURT: It has been asked and answered. I mean
- 13 the answer is yes, she said that.
- 14 MR. COLTON: I didn't recall the answer, that's fine.
- 15 Q. I would like to turn your attention now to the Mayers.
- 16 You're familiar with the vehicle we have been discussing, fixed
- 17 rate deposits or guaranteed fixed rate deposit accounts?
- 18 A. That's correct.
- 19 Q. And you understood from your investigation prior to
- 20 May 25th, 2005, that those were limited term investments?

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- 21 A. Yes.  
22 Q. And you understood that it wasn't one 18-year investment;  
23 correct?  
24 A. That's correct.  
25 Q. But you did not tell Judge Maas that guaranteed fixed rate  
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- 6bftvilh Fraterrigo - cross  
1 deposits were investments that matured and would have to be  
2 renewed; did you?  
3 A. No, I did not.  
4 Q. And you did not tell Judge Maas that guaranteed fixed rate  
5 deposits are not available to the investor until maturity; did  
6 you?  
7 A. No, I did not.  
8 Q. But when you filled out the search warrant affidavit, you  
9 knew that fixed rate deposits were for a particular term and  
10 weren't available until maturity; correct?  
11 A. That's correct.  
12 Q. And when you filled out the affidavit, you knew -- and I  
13 mean that search warrant affidavit -- that the fixed rate  
14 deposit account that the Mayers invested in 1987 was not the  
15 same account they were in at the time of the search warrant?  
16 A. I know that their investment, guaranteed fixed rate  
17 deposit, changed over time.  
18 Q. And you didn't tell Judge Maas that?  
19 A. No, I did not.  
20 Q. So when you wrote that in the affidavit that they invested  
21 in guaranteed fixed rate deposit accounts --  
22 THE COURT: Do you want to give the paragraph?  
23 MR. COLTON: Sorry, Government Exhibit 33 for the  
24 hearing, paragraph 6A, page 3.  
25 A. Okay.

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- 6bftvilh Fraterrigo - cross  
1 Q. You refer in 6A to the Mayers investing million of dollars  
2 with Vilar and Amerindo beginning in or about 1987.  
3 A. That's correct.  
4 Q. And you didn't tell Judge Maas that that expired in '89?  
5 A. No, I did not.  
6 Q. You make reference on the next page that the Mayers  
7 attempted to redeem in or about 2003 approximately 12 million  
8 in fixed rate deposits; correct?  
9 A. That is correct.  
10 Q. But you knew when you wrote that sentence that the fixed  
11 rate deposits that you referred to were not even due to mature  
12 until the end of 2003; correct?  
13 A. In November 2003 they attempted to redeem, and in December  
14 of 2003 was when it was matured.

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- 15 Q. But you didn't write any of that down?  
16 A. No.  
17 Q. And you didn't tell Judge Maas any of what you told this  
18 Court?  
19 A. I put down in or about 2000. That's an accurate statement.  
20 Q. Didn't you think that Judge Maas would want to know that in  
21 2003 by contract the Mayers did not have a right to redeem  
22 their fixed rate deposit until the end of 2003?  
23 A. But in 2003 they gave proper notice, as they were told  
24 before, to redeem their investment. And that statement is  
25 true, that they attempted to redeem and they weren't able to

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6bftvilh Fraterrigo - cross

- 1 redeem.  
2 Q. But you did leave Judge Maas with the impression that all  
3 of 2003 went by without them being able to redeem without  
4 telling Judge Maas that they weren't entitled to redeem in  
5 2003; correct?  
6 MS. McEVOY: Objection.  
7 THE COURT: Did they mature in December of '03,  
8 Mr. Colton.  
9 MR. COLTON: December 31, 2003.  
10 THE COURT: So they did mature in 2003.  
11 MR. COLTON: Yes.  
12 Q. But when the sentence, Inspector Fraterrigo, says: In or  
13 about 2003 when the Mayers attempted to redeem approximately 12  
14 million invested in fixed rate deposits, Amerindo, Vilar,  
15 Tanaka, Tanaka's wife, all rebuffed their efforts and refused  
16 to relieve the funds. Didn't you think it was relevant that  
17 during the first year that you referred to the Mayers weren't  
18 entitled to the funds?  
19 MS. McEVOY: Objection.  
20 THE COURT: Sustained.  
21 MR. COLTON: I'll move on.  
22 THE COURT: Move on.  
23 Q. Agent Fraterrigo, you knew that the Mayers had received  
24 substantial payments from Amerindo during the time period of  
25 1988 through -- at least through 2003; correct?

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6bftvilh Fraterrigo - cross

- 1 A. I recall from what the Mayers told me it was up until 2002.  
2 Q. In fact, in your interview with the Mayers, Lisa Mayer told  
3 you that she received regular payments in the late '80s and the  
4 '90s; correct?  
5 A. That's correct. That was involving their interest  
6 payments.  
7 Q. But you didn't tell Judge Maas that in the '80s and the  
8 '90s the Mayers received regular payments; did you?

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- 9 A. No, I did not.  
10 Q. And in fact, the Mayers provided you with a large number of  
11 documents that evidence consistent and repeated payments or  
12 redemptions by Amerindo to the Mayers during the '80s and the  
13 '90s; correct?  
14 A. It provided some documentation of the redemptions, that's  
15 correct.  
16 Q. We'll take it back to July of 1988. I show you what's been  
17 marked as Defendant's P, as in Poppa, for identification. This  
18 is a letter from Amerindo, correct, to the Mayers?  
19 A. Yes.  
20 Q. And it reflects a redemption of \$26,250 in interest;  
21 correct?  
22 A. That's correct.  
23 Q. And you had this document available to you prior to signing  
24 your search warrant affidavit?  
25 A. Yes, I did.

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6bftvilh Fraterrigo - cross

- 1 Q. And you didn't tell Judge Maas about that redemption?  
2 MS. McEVOY: Objection as to form.  
3 Q. You didn't tell Judge Maas about that interest payment made  
4 by Amerindo to the Mayers?  
5 A. That's correct.  
6 MR. COLTON: Offer P, your Honor.  
7 MS. McEVOY: No objection, your Honor.  
8 MR. HOFFMAN: No objection.  
9 THE COURT: Defendant's P is received.  
10 (Defendant's Exhibit P received in evidence)  
11 Q. Showing you now what's marked as Defendant's Q.  
12 Defendant's Q is a letter from Amerinda to Dr. Herbert Mayer  
13 reflecting an interest payment of \$26,250 in April of 1989;  
14 correct?  
15 A. That is correct.  
16 Q. And this document was available to you when you swore out  
17 your search warrant affidavit; correct?  
18 A. Yes.  
19 Q. And you did not tell Judge Maas about this interest payment  
20 either; did you?  
21 A. No, I did not.  
22 MR. COLTON: Defense offers Q, your Honor.  
23 MS. McEVOY: No objection.  
24 MR. HOFFMAN: No objection.  
25 THE COURT: Received.

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6bftvilh Fraterrigo - cross

- 1 (Defendant's Exhibit Q received in evidence)  
2 Q. I show you now what has been marked as Defendant's R, as in  
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3 Romeo, for identification.

4 THE COURT: If you got a lot of these --

5 MR. COLTON: I'll gather them up while I question at  
6 the same time.

7 THE COURT: Okay.

8 MR. COLTON: I have to give Ms. Margolis the credit  
9 for that.

10 THE COURT: Duly noted. Thank you, Ms. Margolis.

11 Q. Defendant's R is another letter from Amerindo reflecting an  
12 interest payment actually paid to the Mayers; correct?

13 A. Yes.

14 Q. And this was available to you when you swore out your  
15 search warrant affidavit; correct?

16 A. Yes.

17 Q. And this is another \$26,000 -- \$26,250 payment; correct?

18 A. Yes.

19 Q. And you didn't tell Judge Maas about this payment either;  
20 did you?

21 A. No, I didn't put it in the affidavit.

22 Q. Say again?

23 A. No, I didn't put it in the affidavit.

24 Q. When you say no, you didn't put it in the affidavit, you  
25 didn't tell him verbally either?

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6bftvilh

Fraterrigo - cross

1 A. No.

2 Q. And to your knowledge, it was never communicated to Judge  
3 Maas prior to the time he was asked to issue the search  
4 warrant?

5 A. That is correct.

6 THE COURT: I assume you want to offer that.

7 MR. COLTON: Yes.

8 MS. McEVOY: No objection.

9 MR. HOFFMAN: No objection.

10 THE COURT: R is received.

11 (Defendant's Exhibit R received in evidence)

12 Q. I show you now Defendant's S, T, U, and V. Take a moment  
13 it look at those if you don't mind, Agent.

14 Let me know when you have had a chance to review.

15 A. Okay, I'm ready.

16 Q. Defendant's S is a document that was available to you prior  
17 to the time you swore out your search warrant affidavit?

18 A. Yes.

19 Q. And it reflects an interest payment of \$20,000 in this  
20 November 15th, 1991 letter from Amerindo to the Mayers, page 2  
21 of the document, third full sentence, third full paragraph?

22 A. Yes.

23 MR. COLTON: Defendants offer S, your Honor.

24 MS. McEVOY: No objection.

25 MR. HOFFMAN: No objection.

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6bftvilh Fraterrigo - cross

1 THE COURT: Received.  
2 (Defendant's Exhibit S received in evidence)  
3 THE COURT: Can I help shortcut this? Agent, were all  
4 these available to you before you swore out the affidavit, S,  
5 T, U and V?  
6 THE WITNESS: Yes, they were.  
7 THE COURT: Do you want to go what through is  
8 significant about each?  
9 MR. COLTON: In that case I offer all of them, S, T, U  
10 and V for the record.  
11 MS. McEVOY: No objection.  
12 MR. HOFFMAN: No objection.  
13 THE COURT: Received.  
14 (Defendant's Exhibit T, U and V received in evidence)  
15 Q. Looking at Defendant's T now in evidence, that document  
16 which was available to you reflects two payments to the Mayers  
17 in this March '92 letter, one for \$20,000 and one for \$18,508;  
18 correct?  
19 A. Yes, that's correct.  
20 Q. And you did not tell Judge Maas about that \$38,000 worth of  
21 payments from Amerindo to the Mayers; did you?  
22 A. No, I did not.  
23 Q. Looking at Defendant's U, this document, which was  
24 available to you prior to your swearing out the search warrant  
25 affidavit, reflects in March of 1994 a \$500,000 payment from  
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6bftvilh Fraterrigo - cross

1 Amerindo to the Mayers; correct?  
2 A. That is correct.  
3 Q. And you did not tell Judge Maas about that \$500,000;  
4 correct?  
5 A. No.  
6 THE COURT: Can I just be more specific for the  
7 record? It reflects in fact a redemption off of the Technology  
8 Growth Fund; is that right?  
9 MR. COLTON: That's true. In that same paragraph it  
10 says proceeds received.  
11 THE COURT: Is that right, Agent?  
12 THE WITNESS: That is correct.  
13 Q. So you did not tell judge Maas about the \$500,000 proceeds  
14 received as reflected in Defendant's U; did you?  
15 A. No.  
16 MS. McEVOY: Your Honor, I guess I can do this after  
17 the witness leaves the stand, but I believe the record is a  
18 little misleading as of now with respect to this document,  
19 but --

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20 THE COURT: The record is always misleading until  
21 someone gives redirect is your theory, right, and you're  
22 misleading by doing recross. There's no finishing today.

23 MS. McEVOY: To the extent --

24 THE COURT: You can do it on redirect.

25 MS. McEVOY: Okay.

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6bftvilh Fraterrigo - cross

1 THE COURT: The document is in; right? So if you  
2 think Mr. Colton mischaracterized the document, you can tell me  
3 in your closing submission or you can do it on your redirect.

4 MR. COLTON: As to Defendant's V, I just I ask whether  
5 the government has a copy of the last page MAY 2000118 where  
6 the amount is legible. The copy we were provided is not  
7 legible. They may not have one either, I don't know.

8 THE COURT: Mr. Colton, this is something that could  
9 have been done before.

10 MR. COLTON: It could have, but I didn't realize I  
11 couldn't read it. But I could go through the other --

12 BY MR. COLTON:

13 Q. Inspector, this document, Defendant's B, which was  
14 available to you before you swore out the search warrant  
15 affidavit --

16 A. Yes.

17 Q. -- reflects payments from Amerindo to the Mayers in the  
18 amounts of \$48,782, 45,562, 500,000 and 48,752, correct, and  
19 one illegible.

20 A. That's correct.

21 Q. And you did not tell Judge Maas about the redemptions or  
22 payments to the Mayers on Defendant's B that total at least  
23 \$640,000?

24 A. That's correct.

25 Q. I now show you what has been marked as Defendant's X.

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6bftvilh Fraterrigo - cross

1 Defendant's X is a document that was available to you prior to  
2 the time you swore out the search warrant affidavit May 25,  
3 2005; correct?

4 A. That's correct.

5 MR. COLTON: Defense offers X, your Honor.

6 MS. McEVOY: No objection, your Honor.

7 MR. HOFFMAN: No objection.

8 THE COURT: Okay. Defendant's X is received.

9 (Defendant's Exhibit X received in evidence)

10 Q. Defendant's X is a 1997 letter from Amerindo to the Mayers  
11 reflecting a transfer -- or redemption, excuse me, of funds  
12 received by the Mayers in the amount of \$4,644,854.90; correct?

13 A. That's a confirmation that they're redeemed 4.6, that's

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- 14 correct.  
15 Q. And it also says the amount is received; correct?  
16 A. That's correct.  
17 Q. And you didn't tell Judge Maas about this almost -- this  
18 over four and a half million dollar payment from Amerindo to  
19 the Mayers in 1997?  
20 A. No.  
21 Q. And when you testified earlier today about alleged trouble  
22 the Mayers had in 1997, you didn't tell Judge Karas about this  
23 four and a half million dollar plus redemption and payment by  
24 Amerindo to the Mayers?

25 MS. McEVOY: Objection, your Honor.

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6bftvilh Fraterrigo - cross

- 1 THE COURT: Basis?  
2 MS. McEVOY: Mischaracterizes her testimony.  
3 THE COURT: It's been a long day, I can't remember if  
4 does or not. Do you want to rephrase it? If there's a  
5 specific answer that you recall giving, I realize you don't  
6 have the transcript yet, but if you could be as specific as  
7 possible.  
8 Q. Earlier this morning when you were testifying about the  
9 Mayers in 1997 you discussed alleged trouble that they had in  
10 1997 redeeming fixed rate deposits. Do you remember that?  
11 A. That's correct.  
12 Q. At no time did you tell this Court or Judge Maas about the  
13 four and a half plus million dollars of redemption received by  
14 the Mayers from Amerindo in July of 1997; correct?  
15 A. That is correct, but I wasn't asked that question. This is  
16 from ATGF.  
17 Q. I understand. Is there any reason that you didn't tell  
18 Judge Maas about this four and a half million dollar redemption  
19 that Amerindo made?  
20 A. No.  
21 Q. Didn't you think that Judge Maas, in deciding whether to  
22 issue a search warrant that covered the '87 to '97 period would  
23 want to know that Amerindo made good and paid to the Mayers  
24 four and a half plus million dollars in July of 1997?  
25 A. No.

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6bftvilh Fraterrigo - cross

- 1 Q. You didn't think he would want to know that?  
2 A. I didn't think of it at the time.  
3 Q. Did you discuss with Mr. Litt or anybody else at the U.S.  
4 Attorney's Office during the vetting process of the search  
5 warrant affidavit the fact of such a four and a half plus  
6 million dollar redemption in 1997?  
7 A. No, we were referring to the GFRDA investment.

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- 8 Q. During the course of vetting the search warrant affidavit  
9 with Mr. Litt and his supervisors or supervisor at the U.S.  
10 Attorney's Office, was there any discussion in which you were  
11 involved about redemptions and payments by Amerindo to the  
12 Mayers in the '87 to '97 period?  
13 A. No, I don't recall that.  
14 Q. Nobody asked you?  
15 A. No, I don't recall that.  
16 Q. You didn't volunteer to tell anybody about these  
17 redemptions that you knew about?  
18 A. No, I don't recall thinking that at the time, no.  
19 Q. But when you interviewed the Mayers you did ask them about  
20 their investment history, both investments into and redemptions  
21 from Amerindo; correct?  
22 A. Yes, that's correct.  
23 Q. Because you thought during the course of that investigation  
24 that that information was important?  
25 A. That is correct.

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6bftvilh Fraterrigo - cross

- 1 Q. It's information you wanted to know in deciding how to  
2 pursue the investigation in which you were the lead case agent;  
3 correct?  
4 A. Yes, that's correct.  
5 Q. But at the same time you didn't think about whether  
6 information that's relevant to you as case agent during the  
7 investigation would want to be known by the judge who was  
8 making a very important decision?  
9 MS. McEVOY: Objection as to the form.  
10 THE COURT: I'll allow it.  
11 A. As I stated in paragraph two of the affidavit, I didn't  
12 include every detail and every aspect of my investigation in  
13 the affidavit.  
14 Q. To be fair, Agent, you didn't include any redemption or any  
15 aspect of any payment at all from Amerindo to the Mayers,  
16 period; isn't that true?  
17 A. I did not put that, that's correct.  
18 Q. In fact, Lisa Mayer specifically told you in an interview  
19 about the four and a half or \$4.6 million redemption in July of  
20 '97; didn't she?  
21 A. That was from her ATFG account, that's correct.  
22 Q. She specifically told you about it?  
23 A. Yes, she did.  
24 Q. Would it surprise you to learn that in the '88 to '97  
25 period just the documentary evidence that has been admitted in

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6bftvilh Fraterrigo - cross

- 1 this hearing demonstrates payments from Amerindo to the Mayers  
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2 of approximately \$6 million?

3 MS. McEVOY: Objection. Assumes facts not in evidence  
4 and it's also testimony.

5 THE COURT: You'll have to lay a foundation for that,  
6 Mr. Colton.

7 Q. I put before you a whole host of the documents that you had  
8 available to you that list redemptions and payments by Amerindo  
9 to the Mayers; correct?

10 A. That's correct.

11 Q. Did you know at any time that the Mayers redeemed  
12 approximately \$6 million worth of assets from Amerindo during  
13 that '88 to '97 period? Did you know?

14 MS. McEVOY: Objection to "as you know" -- sorry, as  
15 to "at that time."

16 THE COURT: He's always said he means before the  
17 affidavit.

18 A. Can you repeat the question?

19 Q. Did you know either at the time or any time before you  
20 swore out the search warrant affidavit on May 25, 2005, that in  
21 the '88 to '97 time period the Mayers received funds from  
22 Amerindo for redemptions or interest of at least \$6 million?

23 A. Yes.

24 Q. You knew that. And you didn't tell Judge Maas?

25 A. No.

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6bftvilh Fraterrigo - cross

1 Q. But yet you did tell Judge Maas that you thought there was  
2 probable cause to believe that you should have a right to  
3 search that '88 to '97 time period throughout all of Amerindo  
4 U.S.?

5 MS. McEVOY: Objection, asked and answered.

6 THE COURT: One more time, Mr. Colton. I'll let you  
7 do it.

8 MR. COLTON: Thank you.

9 A. Can you repeat the question?

10 THE COURT: Could I impose on the court reporter,  
11 please?

12 (Record read)

13 A. Yes.

14 Q. You testified on direct about an attempted redemption of  
15 the fixed rate deposit in '97. Do you recall that?

16 A. That's correct.

17 Q. But you knew back when you filled out the search warrant  
18 affidavit and you knew when you testified this morning that  
19 that fixed rate deposit account was not yet mature in '97 when  
20 that redemption was attempted; correct?

21 A. That's correct.

22 Q. But yet you didn't tell Judge Maas anything about the '97  
23 attempted redemption; correct?

24 A. No.

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25 Q. And in testifying this morning you left out of your  
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6bftvilh Fraterrigo - cross

1 testimony the fact that the account that they sought to redeem  
2 wasn't mature?

3 MS. McEVOY: Objection as to form.

4 THE COURT: What's wrong with the form?

5 MS. McEVOY: With respect to the part "left out of  
6 your testimony." I don't believe she was asked that question.

7 THE COURT: Go ahead, rephrase it.

8 Q. You failed to mention to this Court that the redemption  
9 that was attempted in '97 was an attempted redemption of an  
10 account that was not yet mature?

11 MS. McEVOY: I object to the form again.

12 THE COURT: Overruled.

13 A. It was a -- from what I recall, that the Mayers attempted  
14 to redeem their account and giving notification prior to  
15 maturity in 1997.

16 THE COURT: Is this the issue, Agent, about the 30-day  
17 notice?

18 THE WITNESS: No, this was different.

19 THE COURT: All right. Go ahead, Mr. Colton.

20 Q. But your testimony earlier today was that the Mayers had  
21 trouble redeeming fixed rate deposits in '97. That was your  
22 testimony; correct?

23 A. Yes, that's what was told to me by the Mayer family. Lisa  
24 Mayer, this is what was told to me by Lisa Mayer.

25 Q. But you also were told that that account that they  
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6bftvilh Fraterrigo - cross

1 attempted to redeem was not yet mature?

2 A. I don't believe I testified -- I mean I believe what I  
3 understood at the time was that they were giving notification  
4 and they wanted to redeem the account and they were discouraged  
5 not to.

6 Q. But at the time they sought to redeem they didn't have a  
7 right to redeem; correct? That's your state of knowledge as  
8 you sit here today.

9 MS. McEVOY: Objection, relevance.

10 THE COURT: Not today, it's what it was at the time.

11 MR. COLTON: I disagree, your Honor, she only  
12 testified to what she knew today. This was not in the  
13 affidavit at all. I'm clearing up the record from the  
14 testimony elicited by the government about '97, which is simply  
15 not mentioned in the affidavit at all.

16 MS. McEVOY: Your Honor, the testimony this morning  
17 had to do with what she was told by Lisa Mayer and what she  
18 knew of the review of the documents before she swore to the

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19 search warrant. The government made clear that that was the  
20 limit of the questions this morning. It had nothing to do with  
21 her knowledge today.

22 MR. COLTON: I'll fix it to try to solve that problem,  
23 your Honor.

24 THE COURT: Go ahead.

25 Q. As of May 25th, 2005 when you executed the search warrant  
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6bftvilh Fraterrigo - cross

1 affidavit, you knew, because Lisa Mayer told you, that the 1997  
2 fixed rate deposit account was not yet mature at the time the  
3 Mayers sought to redeem it?

4 A. No, I don't believe I made that -- I believe, without  
5 looking at the documents I can't answer that question.

6 Q. I show you what has been marked as Defendant's F, as in  
7 foxtrot, for identification, November 15, 2006 hearing. And  
8 I'll refer to your attention -- first of all, these are your  
9 notes of a May 10th, 2005 interview with the Mayers, Lisa Mayer  
10 and her attorney; correct?

11 A. No, this is my notes of Bernard Mark, the attorney for Lisa  
12 Mayer alone.

13 Q. And Bernard Mark was an agent of Lisa Mayer; correct?

14 A. Mayer's attorney, that's correct.

15 Q. And so Mr. Mark told you on May 10th, 2005, slightly more  
16 than two weeks before you swore out the affidavit, page Bates  
17 35, which is the third page of the document: 1997, hard to  
18 liquidate before maturity.

19 A. That's correct.

20 Q. So you knew, because you were told by the Mayers' attorney,  
21 that the attempt at liquidation was before maturity?

22 A. I knew that from the Mayers, from the attorney.

23 THE COURT: Did you want to offer F?

24 MR. COLTON: Yes, your Honor.

25 A. Lisa Mayer told me that she was trying to redeem it. She  
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6bftvilh Fraterrigo - cross

1 didn't tell me that it was before maturity, the attorney did.

2 Q. But your investigation showed you through the attorney that  
3 attempted redemption was premature?

4 A. Prior to maturity.

5 Q. Yes.

6 A. Correct.

7 MR. COLTON: Defense offers F, your Honor.

8 MR. HOFFMAN: No objection.

9 MS. McEVOY: No objection.

10 THE COURT: F is received.

11 (Defendant's Exhibit F received in evidence)

12 Q. Inspector Fraterrigo, in going to Judge Maas you only

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13 presented to him information from one fixed rate deposit  
14 investor, the Mayers, correct, or one family of investors?  
15 A. One family of investors?  
16 Q. In other words, the Mayer family was the only fixed rate  
17 deposit investors that you discussed with Judge Maas?  
18 A. Yes.  
19 Q. Did you tell Judge Maas that the fixed rate deposit program  
20 of Amerindo was a very limited program?  
21 A. No.  
22 Q. Did you tell Judge Maas --  
23 THE COURT: Hang on, I think you have to establish  
24 whether or not she knew that.  
25 MR. COLTON: Fair enough.  
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6bftvilh Fraterrigo - cross

1 Q. Did you know that?  
2 A. By limited by certain terms, no, I didn't.  
3 Q. Did you know at the time you swore out the affidavit that  
4 the Amerindo fixed rate deposit program was limited as an  
5 additional service of the firm to private equity clients only?  
6 A. I believe I had that information in a document.  
7 Q. You do or you don't?  
8 A. I believe I had that information in a document, I can't  
9 recall if I had that before the 25th of May.  
10 Q. I show you what has been marked for identification as  
11 Defendant's Y. Defendant's Y is a document that was available  
12 to you prior to your swearing out the search warrant affidavit  
13 of May 25; correct?  
14 A. That is correct.  
15 MR. COLTON: I offer Y, your Honor.  
16 MS. McEVOY: No objection.  
17 MR. HOFFMAN: No objection.  
18 THE COURT: Defendant's Y is received.  
19 (Defendant's Exhibit Y received in evidence)  
20 Q. Defendant's Y is a letter from Amerindo to the Mayers dated  
21 July 21, 1997; correct?  
22 A. That is correct.  
23 Q. And in the second paragraph in fact it says, second  
24 sentence: As we pointed out to you on a number of times, the  
25 fixed rate deposit business was neither particularly attractive  
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6bftvilh Fraterrigo - cross

1 nor significant to us as a business proposition. We only  
2 offered it as an additional service to our private equity  
3 clients.  
4 That information was available to you; correct?  
5 A. That's correct.  
6 Q. And you reviewed documents given to you by the Mayers  
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7 before submitting your search warrant affidavit to Judge Maas;  
8 correct?  
9 A. I'm sorry, I didn't hear that.  
10 Q. You reviewed documents given to you by the Mayers before  
11 submitting a search warrant affidavit to Judge Maas; correct?  
12 A. Yes.  
13 Q. But you never told Judge Maas that the fixed rate deposit  
14 program was limited to certain special customers of Amerindo;  
15 correct?  
16 A. No.  
17 Q. So in asking Judge Maas to grant you a search warrant from  
18 the beginning of Amerindo for a vast array of records, you  
19 didn't tell him that the Mayers, as investors in the fixed rate  
20 program, were in a very limited program; did you?  
21 A. No, I did not.  
22 Q. Didn't you think that Judge Maas, in trying to decide  
23 whether the information you were providing about fixed rate  
24 program, would want to know how big it was or how widespread it  
25 was in trying to decide whether to give you a search warrant  
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6bftvilh Fraterrigo - cross  
1 for all of Amerindo U.S.?  
2 MS. McEVOY: Objection.  
3 THE COURT: What's the basis for the objection?  
4 MS. McEVOY: Relevance and beyond the scope of  
5 redemption.  
6 THE COURT: Now you're going to make that objection?  
7 MS. McEVOY: To the extent that it had to do with  
8 redemptions of GFRDA, that's one thing, but --  
9 THE COURT: This is the same issue, Mr. Colton, it's  
10 just broadening the scope of the hearing. I understand why you  
11 want to do it.  
12 MR. COLTON: I'll move on.  
13 THE COURT: Thank you. I think you're past your 15  
14 minute warning. You started at 2:20.  
15 MR. COLTON: You noticed that.  
16 THE COURT: I notice more than you think.  
17 MR. COLTON: Not more than I think, that's for sure.  
18 I'm accelerating the pace.  
19 BY MR. COLTON:  
20 Q. Showing you AA, AB, AC, AD, and AF, Agent Fraterrigo, let  
21 me know when you have had a chance to look at the exhibits I  
22 have shown you.  
23 A. Is there an AE?  
24 Q. No. So AA, AB, AC, AD and AF were all documents available  
25 to you in your investigation prior to signing the search  
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6bftvilh Fraterrigo - cross

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- 1 warrant affidavit of May 25; correct?  
2 A. That's correct.  
3 MR. COLTON: Defense offers AA, AB, AC, AD and AF.  
4 MS. McEVOY: No objection.  
5 MR. HOFFMAN: No objection.  
6 THE COURT: Okay, received.  
7 (Defendant's Exhibit AA, AB, AC, AD and AF received in  
8 evidence)  
9 Q. In the interest of speed, Agent Fraterrigo, each of these  
10 documents, AA, AB, AC, AD and AF, list redemptions or interest  
11 payments and result in cash paid by Amerindo to the Mayers  
12 during the '98 to 2000 time period; correct?  
13 A. That is correct.  
14 THE COURT: In the interest of efficiency.  
15 MR. COLTON: As opposed to?  
16 THE COURT: Speed.  
17 MR. COLTON: Fair enough. So adopt.  
18 Q. In fact, just by way of example, AC reflects a \$1.7 million  
19 redemption; correct?  
20 A. That's correct.  
21 Q. And AD reflects a \$2.35 million redemption; correct?  
22 A. That's correct.  
23 Q. \$2.35 million that was sent from Amerindo to the Mayers  
24 bank; correct?  
25 A. That's correct.

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- 6bftvllh Fraterrigo - cross  
1 Q. And as to all of the redemptions and interest payments and  
2 payments reflected in AA through AD and AF, you did not tell  
3 Judge Maas about any of those payments, redemptions or interest  
4 payments; correct?  
5 A. That's correct.  
6 Q. In fact, as reflected in AF, you knew and did not tell  
7 Judge Maas that the Mayers were receiving interest payments in  
8 the summer of 2000 that ranged from 90 to \$200,000 per month  
9 from Amerindo; correct?  
10 A. That's correct.  
11 Q. And after testifying about trouble redeeming fixed rate  
12 deposits in 1997, you did not mention that in 2000, after the  
13 renewal of the fixed rate deposit, the interest payments  
14 actually being made were of that substantial 100 to \$200,000  
15 range; did you?  
16 MS. McEVOY: Objection to form.  
17 THE COURT: To the word substantial?  
18 MS. McEVOY: Also I think completing parts of her  
19 testimony about interest payments versus redemptions.  
20 THE COURT: If you want -- I might have missed that,  
21 but go ahead if you want to break it down, Mr. Colton.  
22 Q. You testified about the '97 attempted redemption of fixed  
23 rates by the Mayers; correct?

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24 A. Yes.

25 Q. In your state of knowledge as of May 25, 2005 was that the  
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6bftvillh Fraterrigo - cross

1 Mayers actually renewed their fixed rate deposit investment?

2 THE COURT: After '97.

3 Q. After '97?

4 A. That is correct.

5 Q. And in 2000, which would have been three years after '97,  
6 you knew both while you were sitting here testifying today and  
7 before you signed the 2005 search warrant affidavit, that the  
8 interest payments in the summer of 2000 had risen to the level  
9 of \$200,000 a month?

10 MS. McEVOY: Objection as to the part of the question  
11 regarding her state of knowledge now.

12 THE COURT: I understand the point that Mr. Colton is  
13 trying to make, I understand the point that you make. It  
14 doesn't really matter. It's her state of knowledge as of today  
15 and also as of May 25.

16 So the question is: Did you know at the time you  
17 swore to the affidavit what it is that Mr. Colton just  
18 represented about the interest payments post 1997 on the GFRDA?

19 THE WITNESS: I know they were receiving interest  
20 payments and it was cut off in October of 2002.

21 THE COURT: But did you know in the summer of 2000  
22 that they were getting interest payments in the dollar amounts  
23 Mr. Colton just mentioned?

24 THE WITNESS: Yes.

25 THE COURT: Did you know that this morning when you  
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6bftvillh Fraterrigo - cross

1 testified?

2 THE WITNESS: Yes.

3 THE COURT: Presumably if she knew it before, she knew  
4 it today. But go ahead, Mr. Colton.

5 BY MR. COLTON:

6 Q. Did you know that the interest payments reflected in the  
7 documents that you have been handed, AA through AF, and the  
8 others -- strike that.

9 Did you know that the interest payments between '98  
10 and 2000 and other redemptions paid by Amerindo to the Mayers  
11 through '98 to 2000 totaled over \$5 million?

12 MS. McEVOY: Objection.

13 THE COURT: Did you know the dollar amount of what  
14 they got?

15 THE WITNESS: I don't know the exact dollar amount,  
16 but I know they were getting interest payments.

17 THE COURT: Did you know it was in the thousands or

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18 hundred of thousands or millions?  
19 THE WITNESS: I knew it was in the millions, I didn't  
20 know the exact number at the time.  
21 BY MR. COLTON:  
22 Q. So you knew that the Mayers in the '98 to 2000 time period  
23 received millions of dollars from Amerindo and didn't tell  
24 Judge Maas; correct?  
25 A. I knew at the time it was the ATGF, they were able to  
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6bftvilh Fraterrigo - cross  
1 redeem on the ATGF and getting some interests on the GFRDA, and  
2 that at a certain point they weren't able to redeem their GFRDA  
3 investment.  
4 Q. How much was the Mayers' original investment?  
5 A. 700,000.  
6 Q. 700,000. And you didn't --  
7 THE COURT: Original investment in Amerindo in general  
8 or in a particular fund?  
9 THE WITNESS: Initial investment was 700,000.  
10 THE COURT: Go ahead, Mr. Colton.  
11 Q. Given that level of initial investment, did you think it  
12 was relevant to the probable cause inquiry that their  
13 redemptions and payments between '88 and 2000 were in excess of  
14 \$10 million?  
15 THE COURT: Hang on. You got --  
16 MR. COLTON: I'm doing the math.  
17 THE COURT: But you got to lay the foundation she knew  
18 it was 10 million. So I laid the foundation for you that she  
19 knew it was millions, in the shorter time period you probably  
20 could extrapolate it was millions.  
21 MR. COLTON: I apologize, I know I could do it in a  
22 longer, more careful way. I was trying to get the point.  
23 Q. You knew it was in the millions; correct?  
24 MS. McEVOY: Objection. What was in the millions?  
25 Q. You knew the redemptions and interest payments received by  
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6bftvilh Fraterrigo - cross  
1 the Mayers from Amerindo pre-2000 was in the millions, and you  
2 knew that as of May 25, 2005?  
3 A. That's correct.  
4 Q. And as compared to initial investment of \$700,000, you  
5 didn't think that would be relevant to the probable cause  
6 determination with respect to '88 to 2000?  
7 MS. McEVOY: Objection.  
8 THE COURT: Overruled.  
9 To Judge Maas.  
10 Q. To Judge Maas.  
11 A. I knew there were other monies that the Mayers had invested

Nov 14 06 Franks Tr.txt

12 in Amerindo throughout the years, but I --  
13 Q. Let's examine that. You knew when you swore out the search  
14 warrant affidavit before Judge Maas that the Mayers were not  
15 only receiving interest payments and redemptions but were  
16 making the affirmative decision to continue to trust and invest  
17 more money with Amerindo over time?  
18 A. I knew at a certain point it stopped. I know that they had  
19 initial investment of 700,000 then made another investment,  
20 then it changed over time.  
21 MR. COLTON: I'm making good time.  
22 THE COURT: You are coming up on your deadline.  
23 MR. COLTON: I am going to do all documents at once in  
24 one more area.  
25 THE COURT: Let's do that.  
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6bftvilh Fraterrigo - cross  
1 BY MR. COLTON:  
2 Q. For the record, I'm showing you AJ, AK, AL, AM, AN, AQ and  
3 AR. Agent Fraterrigo, let me know when you have had a chance  
4 to review those.  
5 A. I'm ready.  
6 Q. Each of the documents that you have been handed AJ through  
7 AN, AQ and AR were documents that were available to you  
8 provided by the Mayers before you signed the search warrant  
9 affidavit; correct?  
10 A. That's correct.  
11 Q. And each of those documents reflects a further investment  
12 by the Mayers into Amerindo during the course of that time  
13 period covered by those documents; correct?  
14 A. That's correct.  
15 Q. And you did not tell Judge Maas that during the time period  
16 before 2003 that the Mayers were continuing to invest  
17 additional sums with Amerindo?  
18 A. No.  
19 Q. Didn't you think it would be relevant to the Judge's  
20 determination of probable cause as to the time period of 1988  
21 to 2000 that not only were the Mayers not dissatisfied but they  
22 were satisfied enough to continue to invest further with  
23 Amerindo?  
24 MS. McEVOY: Objection as to relevance to probable  
25 cause. That's not the subject of this.

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6bftvilh Fraterrigo - cross  
1 THE COURT: Really? What else are we here for?  
2 The whole idea is whether or not there were things  
3 relevant to probable cause that should have been told to the  
4 judge that weren't.  
5 MS. McEVOY: It's one thing if the question is

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6 phrased: Did you tell the magistrate judge about these facts.

7 It's a legal determination, the materiality assessment.

8 THE COURT: Mr. Colton asked the same question phrased

9 almost identically on all the other documents that he's shown.

10 So go ahead and answer the question.

11 THE WITNESS: Could are you repeat that?

12 (Record read)

13 A. I didn't think of it at the time.

14 MR. COLTON: Defense moves AJ, AK, AL, AN, AQ and AR.

15 MS. McEVOY: No objection.

16 MR. HOFFMAN: No objection.

17 THE COURT: Received.

18 (Defendant's Exhibit AJ, AK, AL, AN, AQ and AR

19 received in evidence)

20 MR. COLTON: Just for the record, for the purposes of

21 this hearing I have spoken with the government, we stipulate

22 that the government had Exhibit AS before May 25th, 2005, and I

23 think we stipulate to its admissibility for this hearing.

24 THE COURT: For this hearing only.

25 MS. McEVOY: That's correct.

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6bftvilh Fraterrigo - cross

1 THE COURT: Okay, so AS is received.

2 (Defendant's Exhibit AS received in evidence)

3 Q. Inspector Fraterrigo, AS reflects a \$523,000 purchase by

4 the Mayers in 2000; correct?

5 A. That's correct.

6 Q. Earlier you testified about the fixed rate deposit account

7 that the Mayers sought to redeem in 2003; correct?

8 A. That's correct.

9 Q. And you knew when you swore out the search warrant

10 affidavit on May 25th, 2005, that the Mayers had elected to

11 actually renew in January of 2001; correct?

12 MS. McEVOY: Objection as to form, "renew."

13 Q. Renew their fixed rate deposit account in January 2001.

14 A. I know they renewed their fixed rate deposit in or about

15 January of 2001, that's correct.

16 Q. I show you what has been marked as AT and AU1.

17 A. Yes.

18 Q. Exhibit AT is a document provided by the Mayers to the

19 government that was available to you prior to May 25th, 2005;

20 correct?

21 A. That's correct.

22 Q. As is AU1; correct?

23 A. That is correct.

24 MR. COLTON: Defense offers AT and AU1, your Honor.

25 THE COURT: Any objection?

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17 A. That's correct.  
18 Q. And some of them had MAY series which reflected the Mayers;  
19 correct?  
20 MR. LITT: Could we have one moment?  
21 THE COURT: Of course.  
22 MR. COLTON: What I ask the Court to do is hold AU1 in  
23 abeyance and we'll try to work it out.  
24 THE COURT: Fine.  
25 MR. COLTON: I offer AT, which I think there was no  
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6bftvilh Fraterrigo - cross  
1 objection to.  
2 MS. McEVOY: That's correct, your Honor.  
3 THE COURT: All right. AT is received, and I'll hold  
4 AU1 in abeyance.  
5 And we're wrapping this up; right?  
6 MR. COLTON: That's correct.  
7 (Defendant's Exhibit AT received in evidence)  
8 BY MR. COLTON:  
9 Q. In fact, AT, which was available to you, is a letter from  
10 the Mayers to Alberto Vilar and Gary Tanaka of 1997 in which  
11 they say: We are certainly most appreciative and grateful for  
12 your years of fine work and excellent results. Correct? The  
13 bottom of the page.  
14 A. Yes.  
15 Q. And you didn't tell Judge Maas that the Mayers were that  
16 pleased with Amerindo's performance in their tenth year of  
17 investment with Amerindo; correct?  
18 A. That's correct.  
19 Q. In your affidavit, which is Government Exhibit 33, with  
20 respect to the Mayers, you represent that in 2003, at the end  
21 of paragraph 6A, Amerindo is just dribbling out to the Mayers  
22 as little money as possible from their multimillion dollar  
23 investment; correct?  
24 A. That's correct.  
25 Q. But you didn't tell Judge Maas that in 2004 alone Amerindo  
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6bftvilh Fraterrigo - cross  
1 paid to the Mayers \$600,000; did you?  
2 A. No, I did not.  
3 Q. But as you testified this morning, as of May 25th, 2005 you  
4 knew that Amerindo had paid the Mayers \$600,000 in 2004;  
5 correct?  
6 A. That's correct.  
7 Q. How do you define dribble?  
8 A. They asked for their full redemption of their investment,  
9 and Amerindo gave them payments here and there. They did not  
10 give a full redemption of their investment as they requested.

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11 Q. So in your definition of dribble, that's equal to \$50,000 a  
12 month?  
13 A. It was payments here and there. It wasn't regular  
14 payments, it's whatever they could provide. It wasn't -- the  
15 Mayer family told me that they gave proper notification to make  
16 a full redemption on their investment, and they were given  
17 payments here and there from Amerindo.  
18 Q. And I'm asking you whether an average of \$50,000 cash per  
19 month is what you consider to be dribble about.  
20 MS. McEVOY: Objection. Assumes facts not in  
21 evidence.  
22 Q. 600,000 divided by twelve.  
23 THE COURT: I think she's actually answered the  
24 question. I think she answered the question.  
25 Q. In fact, Lisa Mayer did tell you that she got \$600,000  
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6bftvilh Fraterrigo - cross  
1 since 2004; correct?  
2 A. Sorry?  
3 Q. She told that you specifically in an interview, Lisa Mayer  
4 said we got \$600,000 in 2004 from Amerindo?  
5 MS. McEVOY: Objection, asked and answered.  
6 MR. COLTON: That's different than she knew, she was  
7 told by the witness.  
8 THE COURT: She knew because she was told by the  
9 witness.  
10 MR. COLTON: It's in documents.  
11 THE COURT: But at the end of day she knew.  
12 Q. But you didn't tell Judge Maas about this \$600,000 in  
13 payments of 2004?  
14 MS. McEVOY: Objection, asked and answered.  
15 THE COURT: Sustained.  
16 MR. COLTON: One moment, your Honor.  
17 Q. Inspector Fraterrigo, do you still have Defendant's H in  
18 front of you? I recognize it's light. If it would be easier,  
19 I'll get you another copy.  
20 A. Yes.  
21 Q. And Defendant's H is a your notes of an interview with  
22 Lilly Cates; correct?  
23 A. That's correct.  
24 Q. And in taking he those notes you endeavored to be accurate;  
25 correct?

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6bftvilh Fraterrigo - cross  
1 THE COURT: She already said that, come on.  
2 Q. Referring to what is page FR77 at the bottom right-hand  
3 corner, on May 24th, 2005, almost a year and a half ago and on  
4 the day before you swore out the search warrant and complaints,  
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19 May 25th, were you aware of misrepresentations by Mr. Vilar to  
20 investors?

21 A. Yes.

22 Q. Did you take the statement in this letter by Mr. Vilar, "We  
23 have only offered fixed rate deposit accounts to our  
24 long-standing private equity clients who sought to diversify  
25 their equity capital gains," at face value?

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6bftvilh Fraterrigo - redirect

1 A. No.

2 MR. HOFFMAN: Objection.

3 THE COURT: Overruled.

4 A. No.

5 Q. As Lisa Mayer described her family's investment history  
6 with Amerindo to you, were the Mayers able to redeem their  
7 GFRDA investment in 1997?

8 A. No, they were not.

9 Q. What happened?

10 A. In 1997 they were discouraged not to, and they eventually  
11 kept their GFRDA investment with Amerindo. They were able to  
12 redeem their ATGF investment.

13 Q. You were asked a series of questions on cross-examination  
14 about whether certain information you knew at the time about  
15 redemptions, payments, were relevant to the probable cause  
16 determination. Prior to swearing to a search warrant  
17 affidavit, did you consciously give consideration one way or  
18 another to whether that information was relevant to the  
19 probable cause determination?

20 A. No, I did not.

21 MS. McEVOY: No further questions.

22 THE COURT: Recross at your own risk.

23 MR. COLTON: I'm examining the difference between no  
24 minutes and two minutes. That's all I'm looking at, a couple  
25 of things.

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6bftvilh Fraterrigo - recross

1 THE COURT: I stand by my statement.

2 MR. COLTON: All I would like to do, your Honor, is  
3 complete out the record with a couple of documents. And I  
4 actually am happy not to ask about it other than foundation.

5 THE COURT: Fine.

6 RECROSS EXAMINATION

7 BY MR. COLTON:

8 Q. Agent Fraterrigo, I show you what has been marked for  
9 identification as Defendant's AY.

10 A. Yes.

11 Q. AY is a document provided to the government by the Mayers  
12 and available to you before May 25th, 2005?

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13 A. Yes.

14 MS. McEVOY: Objection as to scope.

15 THE COURT: Well, this is in merely to complete the  
16 record on the documents the government just put in.

17 MR. COLTON: That's right. And frankly I'm happy she  
18 had it. Defense now offers it.

19 MS. McEVOY: I'm not sure how it completes the record  
20 on the subjects on the documents the government put in.

21 MR. COLTON: The question the government is clearly  
22 arguing is that the state of the inspector's knowledge was the  
23 Mayers said they wouldn't give us our money back. There is a  
24 suggestion, I think a good one, if you read this document that  
25 there was -- that was available to the agent -- that they were

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6bftvilh Fraterrigo - recross

1 discussing the workout and negotiating a workout. And there is  
2 a difference between refusing to give the money and trying to  
3 negotiate a workout. Our position is it should have been told  
4 to Magistrate Judge Maas. It wasn't. We know that from the  
5 affidavit. We would just like this document in the record.  
6 The Court can take it for what it's worth, and I won't even ask  
7 the agent questions about it.

8 THE COURT: Ms. McEvoy?

9 MS. McEVOY: Your Honor, this is beyond the scope. It  
10 has to do with the proposed schedule redemption payments that  
11 Inspector Fraterrigo testified about on cross-examination.

12 THE COURT: But it's a schedule, basically an offer.

13 It's a compromise: Let's work this out, here's our proposal.

14 MS. McEVOY: Right. It's beyond the scope at the end  
15 of the day.

16 THE COURT: It could have gone in, frankly, when  
17 Mr. Colton crossed initially, so I'm not going to worry about  
18 it. It's in.

19 I take it you have no objection.

20 MR. HOFFMAN: I have no objection.

21 THE COURT: So AY is in.

22 (Defendant's Exhibit AY received in evidence)

23 THE COURT: Anything else, Mr. Colton?

24 MR. COLTON: Just to complete the record, I didn't  
25 offer Exhibit I, which was the listing of the documents the

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6bftvilh Fraterrigo - recross

1 government represents were in possession of the government.

2 THE COURT: The cover letter?

3 MR. COLTON: Yes. For record completeness I would  
4 like that as part of the record.

5 THE COURT: Any objection to that?

6 MS. McEVOY: No objection.